

JESSE R. COLLINS ET AL.

IBLA 96-488

Decided October 7, 1998

Appeal from a decision issued by the California State Office, Bureau of Land Management, rejecting the recordation of two association placer claims (CAMC 130467 and CAMC 175708) and the mineral patent application filed for those claims (CACA 26798).

Affirmed in part, reversed in part, and vacated in part.

1. Administrative Procedure: Administrative Review-- Res Judicata--Rules of Practice: Appeals: Effect of

The doctrine of administrative finality, the administrative counterpart of the doctrine of res judicata, dictates that once a party has availed himself of the opportunity to obtain administrative review of a decision within the Department, that party is precluded from relitigating the matter in subsequent administrative proceedings except upon a showing of compelling legal or equitable reasons.

APPEARANCES: Jesse R. Collins, Barstow, California, and Robert J. Collins, Hesperia, California, pro sese.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Jesse R. Collins and Robert J. Collins (the Collinses) have appealed a June 3, 1996, Decision issued by the California State Office, Bureau of Land Management (BLM), rejecting the recordation of amended location notices for the Pink Lady (CAMC 130467) and the Pink Lady #1 (CAMC 175708) association placer claims. The Decision also rejected the Collinses' mineral patent application for those claims (CACA 26798).

On July 1, 1983, the Collinses and others 1/ located the Pink Lady association placer claim, embracing 160 acres of land, described as the

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1/ The additional locators of the Pink Lady claim included: Deborah J. Collins, Mildred E. Collins, Clifford E. Amhart, Shirley A. Amhart, Linda J. Collins Wood, and Karen M. Case. These locators conveyed their interest in the claims to Robert J. Collins in June and August 1984.

SW<sup>1</sup>/<sub>4</sub> sec. 4, T. 8 N., R. 2 W., San Bernardino Meridian (SBM), San Bernardino County, California. On August 12, 1983, they filed a copy of the location notice for the Pink Lady with BLM, in accordance with section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1994).

On March 1, 1986, the Collinses and Mildred E. Collins <sup>2/</sup> located the Pink Lady #1 association placer, claiming 60 acres in the NW<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub> and the S<sup>1</sup>/<sub>2</sub>SW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub> sec. 4, T. 8 N., R. 2 W., <sup>3/</sup> SBM. A copy of the location notice for the Pink Lady #1 was filed with BLM on March 7, 1986. On June 28, 1990, the Collinses filed a mineral patent application seeking patent to the land covered by the two claims.

In a Decision dated April 26, 1991, BLM declared the Pink Lady and Pink Lady #1 null and void in part as to the land subject to highway rights-of-way LA 0143954, LA 0166500, and LA 0166500A, which had been issued to the State of California pursuant to 23 U.S.C. § 317 (1994) on March 29, 1957, July 27, 1960, and March 30, 1971. <sup>4/</sup> The basis for this determination was that the land subject to those rights-of-way was not open to mineral entry when the claims were located. The Decision further noted that, under 30 U.S.C. § 36 (1994), the land subject to an association placer claim must be contiguous, and that the highway rights-of-way ran through the Pink Lady claim, dividing it into noncontiguous tracts. The Collinses were directed to file an amended location notice selecting one of the tracts and excluding noncontiguous tracts. It was explained that separate claims could be located on the excluded tracts, subject to valid intervening rights. The Decision also explained that the points of discovery for both the Pink Lady and the Pink Lady #1 must be within the selected tract and that the claims must either conform to an aliquot parts description or be delineated by a mineral survey. BLM advised that, if the Collinses amended the claims to conform to an aliquot parts description, they should exclude any noncontiguous parcels and land conflicting with the highway rights-of-way, and if they chose to have a mineral survey performed, they must withdraw the patent application pending completion of the survey.

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<sup>2/</sup> Mildred E. Collins conveyed her interest to Robert J. Collins by quit claim deed dated July 31, 1990.

<sup>3/</sup> The location notice filed for recordation with BLM described the Pink Lady #1 claim as locating the "NW<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub> and S<sup>1</sup>/<sub>2</sub>, SW<sup>1</sup>/<sub>4</sub>, NE<sup>1</sup>/<sub>4</sub> (60 acres)." As punctuated, the description embraces far more than 60 acres. It appears that BLM determined the claimants intended to describe the NW<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub> and the S<sup>1</sup>/<sub>2</sub>SW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>, which would equate to 60 acres. See Robert J. Collins, 129 IBLA 341, 342 n.4 (1994).

<sup>4/</sup> In the appeal currently before us, the Collinses contend that they have no record of an Apr. 26, 1991, decision declaring their claims null and void in part and request a copy of that decision "if in fact it does exist." The record establishes, however, that they received the Apr. 26, 1991, Decision and appealed it to the Board. See discussion, infra.

The Collinses appealed BLM's Decision to the Board. On appeal, they specifically objected to that portion of the Decision requiring the selection of a portion of the Pink Lady claim and eliminating a portion of the claim because the claim, as originally located, consisted of two noncontiguous tracts. On May 31, 1994, the Board affirmed BLM's Decision, specifically finding that those portions of the claims located on lands subject to the highway rights-of-way were properly declared null and void and that association placer claim locations made pursuant to 30 U.S.C. § 36 (1994) could not contain noncontiguous tracts of land within a single location. Robert J. Collins, supra, at 343-44.

The Collinses amended the location of the Pink Lady association placer claim on August 31, 1994. The location notice for the amended claim stated that the claim contained 130 acres and

exclude[d] the right-of-way embraced in the CALTRANS I 40 SEWINDER ROAD and later the State Highway Department relinquished to the County of San Bernardino on June 1, 1973. See IBLA-309, May 31, 1994. This claim embraces the acreage on the east side of I 15/40 Hwy. Also amended to meet contiguity requirements.

The Collinses submitted the amended location notice and a request for reinstatement of their patent application to BLM on January 23, 1995, asserting that the application should be "grandfathered" and processed regardless of the moratorium on processing mineral patent applications. 5/

In a letter dated February 6, 1995, BLM informed the Collinses that their mineral patent application could not be "grandfathered" because it had not been perfected to the point of issuance of a First Half Final Certificate before October 1, 1994, and that all further action on processing the application had been suspended until termination of the moratorium.

In a decision, also dated February 6, 1995, BLM advised the Collinses that Federal Aid Highway right-of-way LA 0166500A still rendered the Pink Lady association placer claim noncontiguous. By this decision, BLM granted 30 days to file an amended location notice excluding the land conflicting with the rights-of-way and noncontiguous parcels. BLM reiterated that the remaining portion of the Pink Lady claim must encompass the point of discovery and that the claim boundaries must either conform to an aliquot parts description or be established by an approved mineral survey.

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5/ Since 1994, there has been a Congressionally imposed moratorium on acceptance of mineral patent applications. The latest extension of the moratorium can be found at section 314 of the Department of the Interior and Related Agencies Appropriations Act of 1998, Pub. L. No. 105-83, 111 Stat. 1543 (1997). See G. Donald Massey, 142 IBLA 243, 246 (1998).

The Collinses submitted additional information and arguments by letters dated February 28, April 17, and August 2, 1995. The Collinses submitted a map showing the Pink Lady Placer as being that portion of the original claim lying easterly of right-of-way LA 0143954 and a document executed by the State of California relinquishing that portion of state right-of-way LA 0166500A (Sidewinder Road) to San Bernardino County. BLM deemed the information insufficient to comply with its February 6, 1995, Decision, and granted the Collinses additional extensions of time to supply the required amended location notices. See Decisions dated Mar. 28 and July 11, 1995.

In its June 3, 1996, Decision, BLM rejected the recordation of the Pink Lady and the Pink Lady #1 association placer claims and the mineral patent application submitted for those claims. BLM found that although the Collinses had been given several opportunities to comply with the April 26, 1991, Decision's requirement that they either amend the claims to conform to an aliquot parts description or have a mineral survey done, they had failed to comply.

On appeal, the Collinses maintain that the claims were contiguous and conformed to an aliquot parts description until portions of them were improperly taken by BLM. They deny that the highway rights-of-way rendered parts of their claims null and void. They assert that the State of California abandoned the rights-of-way in 1973, when it relinquished them to San Bernardino County, and that the lands were open to mineral location after that date. Because they located the Pink Lady and Pink Lady #1 association placer claims after the relinquishment, they contend that no contiguity problem exists and that BLM, therefore, erroneously rejected the location notices and the mineral patent application. <sup>6/</sup>

[1] The bulk of this appeal essentially asks us to revisit our decision in Robert J. Collins, supra, in which we affirmed BLM's April 26, 1991, Decision, declaring the Pink Lady and the Pink Lady #1 association placer claims null and void in part as to lands within the highway rights-of-way and requiring that the association placer claims be amended to exclude noncontiguous parcels and lands conflicting with the rights-of-way. As a general rule, the doctrine of administrative finality, the administrative counterpart of the doctrine of res judicata, precludes

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<sup>6/</sup> The Collinses also complain that BLM improperly diminished their rights by issuing a road right-of-way grant (CA 29512) to the City of Barstow on Dec. 1, 1993, which divides the claims and renders them noncontiguous. None of the BLM decisions before us raises an issue regarding the Barstow right-of-way, which was issued pursuant to Title V of FLPMA, 43 U.S.C. § 1761 (1994), long after the location of the claims, as either an impediment to the existence or contiguity of the claims. In a letter dated Nov. 14, 1995, BLM explained that the 1993 Barstow right-of-way had no segregative effect on valid mining claims located prior to that date. See Statement of Reasons (SOR), Ex. B; see also SOR, Ex. E.

reconsideration of matters finally resolved for the Department in an earlier appeal. Richard W. and Lula B. Taylor, 139 IBLA 236, 241 (1997); Homestake Mining Co. of California, 136 IBLA 307, 317 (1996); Laguna Gatuna, Inc., 131 IBLA 169, 172 (1994). The doctrine of administrative finality dictates that once a party has availed himself of the opportunity to obtain administrative review within the Department, the party is precluded from relitigating the matter in subsequent proceedings except upon a showing of compelling legal or equitable reasons. Richard W. and Lula B. Taylor, *supra*; Gifford H. Allen, 131 IBLA 195, 202 (1994).

The Collinses filed an amended location notice which eliminated the portion of the Pink Lady Placer lying either in or westerly of right-of-way LA 0143954. The other right-of-way in question, state right-of-way LA 0166500A, runs in an easterly-westerly direction and divides the remaining portion of the claim into additional segments, one to the north and one to the south of that right-of-way. Therefore, while the amended location notice cured part of the problem regarding which noncontiguous portion the Collinses intended to retain, it did not resolve that problem completely. In that the amended location notice did relinquish a portion of the land originally subject to the claim, and partially correct the problem that the claimants intended to correct, it should have been accepted for recordation.

Notwithstanding this error on the part of BLM, the remaining portion of the claim remained in two parts if right-of-way LA 0166500A was in good standing when the claim was located. On the other hand, if that right-of-way had been relinquished prior to location of the Pink Lady Placer, the description in the amended location notice would encompass one, rather than two tracts. In 1973, the State of California relinquished portions of highway right-of-way LA 0166500A (Sidewinder Road) to San Bernardino County. The Collinses contend that the lands within that right-of-way were relinquished by the right-of-way holder and open to mineral entry when they located their claims. Their understanding of this document is in error. The State's relinquishment should be viewed as an assignment of the right-of-way rather than a relinquishment and surrender of the right-of-way to BLM, and the 1973 relinquishment did not affect the status of the lands vis a vis BLM or terminate the right-of-way. The relinquishment simply redesignated the State entity controlling and maintaining the highway right-of-way. Thus, the lands subject to highway right-of-way LA 0166500A remained closed to mineral entry and location when the Collinses located their claims. The underlying legal principals set out in Robert J. Collins, *supra*, remain applicable, and the Collinses have not shown compelling legal or equitable reasons to reopen the issues finally decided in that Decision.

The portion of the amended Pink Lady Placer located on land subject to highway right-of-way LA 0166500A remains null and void ab initio. As previously stated in Robert J. Collins, *supra*, an association placer claim location made pursuant to 30 U.S.C. § 36 (1994) cannot contain noncontiguous tracts of land within a single location. The Collinses are

hereby directed to select the portion of the Pink Lady Placer they intend to retain within 30 days from the date of receipt of this Decision. This notification can be carried out in the form of an amended location notice or in the form of a letter to BLM advising BLM of that portion of the claim they have chosen to retain. <sup>7/</sup>

As noted above, on February 6, 1995, BLM informed the Collinses that their mineral patent application could not be "grandfathered" because it had not been perfected to the point of issuance of a First Half Final Certificate before October 1, 1994, and that all further action on processing the application had been suspended until termination of the moratorium. In that any action on the Collinses mineral patent application has been suspended by Congress, it was improper for BLM to reject the Collinses' mineral patent application for those claims. Therefore that portion of the decision rejecting mineral patent application CACA 26798 is vacated, that application is reinstated, but suspended until termination of the moratorium.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed in part, reversed in part, and vacated in part.

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R.W. Mullen  
Administrative Judge

I concur.

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C. Randall Grant, Jr.  
Administrative Judge

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<sup>7/</sup> Although the preferable method for making this selection is to file an amended location notice, any written notice stating the intent of the claimants to abandon a portion of the claim should suffice. See Brown v. Gurney, 201 U.S. 184 (1906).

